IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

CRP.No. 53 of 2005(I)

AGAINST THE ORDER DATED 19/08/2004 IN IA 6045 2004 IN OS.1670/2001 of I ADDL.M.C.,ERNAKULAM

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REVN. PETITIONER: RESPONDENT:

P.P.GEORGE, AGED 55 YEARS,
S/O.P.V.PAILY, R/A. JYOTHI, HOUSE NO. CC 29/685,
VYTTILA, DESOM, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS: 3ETITIONER:

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1. KOUSALYA MOHANAN, W/O.LATE M.R.MOHANAN, MANCHAKKATTIL HOUSE, KUREEKKAD P.O. THIRUAMKULAM.

2. DEEPU MOHANAN,(MINOR), S/O.LATE M.R.MOHANAN, MANCHAKATTIL HOUSE, KUREEKKAD P.O. THIRUVAMKULAM, REP. BY THE IST PETITIONER(MOTHER), AS GUARDIAN.

3. DIVYA MOHANAN (MINOR) D/O.LATE M.R.MOHANAN, MANCHAKKATTIL HOUSE, KUREEKKAD P.O. THIRUVAMKULAM, REP. BY THE IST PETITIONER(MOTHER) AS GUARDIAN.

4. M.P.SURESH, MANCHAKKATTIL HOUSE, KUREEKKAD P.O. THIRUVAMKULAM.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 126/05 IN CRP 53/05

DISMISSED

1/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO. 53 OF 2005

Dated 1st January 2007

O R D E R

Petitioner is plaintiff in O.S.1670/01 and O.S.654/02 on the file of Additional Munsiff court, Ernakulam. Both suits are for specific performance of agreements for sale allegedly executed by deceased Mohanan. First respondent is the wife and respondents 2 and 3 are their children. Defendants filed I.A.6045/04, an application for joint trial of both suits. As per order dated 19/8/2004 learned Munsiff allowed the application. It is challenged in this revision petition filed under Section 115 of Code of Civil Procedure.

2. Learned counsel appearing for petitioner and respondents were heard. Learned counsel appearing for respondents pointed out that revision itself is not maintainable in view of the amended proviso to Section 115 of the Code. Under impugned order, the suit or proceedings are not finally disposed and therefore revision is not maintainable. Relying on the decision

of Apex court in **Col.Anil Kak (Retd.) v. Municipal Corporation, Indore and Ors (JT 2005 (8) SC 412)** learned counsel appearing for petitioner argued that even if revision is not maintainable this court is competent to treat the petition as one filed under Article 227 of Constitution of India and the impugned order is to be quashed in exercise of the supervisory powers of this court.

3. On hearing the learned counsel appearing for petitioner and respondents, I do not find any reason to interfere with the impugned order, whereunder learned Munsiff has exercised the discretion vested in him to have a joint trial of both suits.

Revision petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.